

## CHANGE IN STRUCTURE OF LICENSEE

**§ 107.470 SBA approval of merger, consolidation, or reorganization of Licensee.**

(a) *Prior approval requirements.* You may not merge, consolidate, change form of organization (corporation or partnership) or reorganize without SBA's prior written approval. Any such merger or consolidation will be subject to § 107.440.

(b) *Fee.* A processing fee of \$5,000 must accompany any application for approval of a change in your form of organization (from corporation to partnership or partnership to corporation).

## TRANSFER OF LICENSE

**§ 107.475 Transfer of license.**

You may not transfer your license in any manner without SBA's prior written approval.

**Subpart E—Managing the Operations of a Licensee**

## GENERAL REQUIREMENTS

**§ 107.500 Lawful operations under the Act.**

You must engage only in the activities contemplated by the Act and in no other activities.

**§ 107.501 Identification as a Licensee.**

You must display your SBIC license in a prominent location. You must also have a listed telephone number. Before collecting an application fee or extending Financing to a Small Business, you must obtain a written statement from the concern acknowledging its awareness that you are "a Federal licensee under the Small Business Investment Act of 1958, as amended."

**§ 107.502 Representations to the public.**

You may not represent or imply to anyone that the SBA, the U.S. Government or any of its agencies or officers has approved any ownership interests you have issued or obligations you have incurred. Be certain to include a statement to this effect in any solicitation to investors. Example: You may not represent or imply that "SBA

stands behind the Licensee" or that "Your capital is safe because SBA's experts review proposed investments to make sure they are safe for the Licensee."

**§ 107.503 Licensee's adoption of an approved valuation policy.**

(a) *Valuation guidelines.* You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division.

(b) *SBA approval of valuation policy.* You must have a written valuation policy approved by SBA for use in determining the value of your Loans and Investments. You must either:

(1) Adopt without change the model valuation policy set forth in section III of the Valuation Guidelines for SBICs; or

(2) Obtain SBA's prior written approval of an alternative valuation policy.

(c) *Responsibility for valuations.* Your board of directors or general partner(s) will be solely responsible for adopting your valuation policy and for using it to prepare valuations of your Loans and Investments for submission to SBA. If SBA reasonably believes that your valuations, individually or in the aggregate, are materially misstated, it reserves the right to require you to engage, at your expense, an independent third party, acceptable to SBA, to substantiate the valuations.

(d) *Frequency of valuations.* (1) If you have outstanding Leverage or Earmarked Assets, you must value your Loans and Investments at the end of the second quarter of your fiscal year, and at the end of your fiscal year.

(2) Otherwise, you must value your Loans and Investments only at your fiscal year end.

(3) On a case-by-case basis, SBA may require you to perform valuations more frequently.

(4) You must report material adverse changes in valuations at least quarterly, within thirty days following the close of the quarter.

(e) *Review of valuations by independent public accountant.* (1) For valuations performed as of the end of your fiscal

## Small Business Administration

## § 107.510

year, your independent public accountant must review your valuation procedures and the implementation of such procedures, including adequacy of documentation.

(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468) must include a statement that your valuations were prepared in accordance with your approved valuation policy established in accordance with section 310(d)(2) of the Act.

[61 FR 3189, Jan. 31, 1996, as amended at 63 FR 5866, Feb. 5, 1998]

### **§ 107.504 Computer capability requirements of Licensee.**

You must have a personal computer with a modem, and be able to use this equipment to prepare reports (using SBA-provided software) and transmit them by modem to SBA.

### **§ 107.505 Facsimile requirement.**

You must be able to receive fax messages 24 hours per day at your primary office.

### **§ 107.506 Safeguarding Licensee's assets/Internal controls.**

You must adopt a plan to safeguard your assets and monitor the reliability of your financial data, personnel, Portfolio, funds and equipment. You must provide your bank and custodian with a certified copy of your resolution or other formal document describing your control procedures.

### **§ 107.507 Violations based on false filings and nonperformance of agreements with SBA.**

The following shall constitute a violation of this part:

(a) *Nonperformance.* Nonperformance of any of the requirements of any Debenture, Participating Security or Preferred Security, or of any written agreement with SBA.

(b) *False statement.* In any document submitted to SBA:

(1) Any false statement knowingly made; or

(2) Any misrepresentation of a material fact; or

(3) Any failure to state a material fact. A material fact is any fact which is necessary to make a statement not

misleading in light of the circumstances under which the statement was made.

### **§ 107.508 Accessible office.**

You must maintain an office that is convenient to the public and is open for business during normal working hours.

### **§ 107.509 Employment of SBA officials.**

Without SBA's prior written approval, for a period of two years after the date of your most recent issuance of Leverage (or the receipt of any SBA Assistance as defined in part 105 of this chapter), you are not permitted to employ, offer employment to, or retain for professional services, any person who:

(a) Served as an officer, attorney, agent, or employee of SBA on or within one year before such date; and

(b) As such, occupied a position or engaged in activities which, in SBA's determination, involved discretion with respect to the granting of Assistance under the Act.

## MANAGEMENT AND COMPENSATION

### **§ 107.510 SBA approval of Licensee's Investment Adviser/Manager.**

You may employ an Investment Adviser/Manager who will be subject to the supervision of your board of directors or general partner. If you have Leverage or plan to seek Leverage, you must obtain SBA's prior written approval of the management contract. SBA's approval of an Investment Adviser/Manager for one Licensee does not indicate approval of that manager for any other Licensee.

(a) *Management contract.* The contract must:

(1) Specify the services the Investment Adviser/Manager will render to you and to the Small Businesses in your Portfolio; and

(2) Indicate the basis for computing Management Expenses.

(b) *Material change to approved management contract.* If there is a material change, both you and SBA must approve such change in advance. If you are uncertain if the change is material, submit the proposed revision to SBA.